

§ 537.107

5 CFR Ch. I (1–1–10 Edition)

to make additional student loan repayment benefits contingent on budget levels or other factors, it must address these contingent benefits in the written service agreement as described in § 537.107(a).

(2) The amount of student loan repayment benefits provided by an agency is subject to both of the following limits:

(i) \$10,000 per employee per calendar year; and

(ii) A total of \$60,000 per employee.

(3) In applying the limits in paragraph (c)(2) of this section, the agency must count the full student loan repayment benefit (*i.e.*, before deducting any tax withholdings as described in paragraph (a)(6)(iii) of this section).

(d) *Employee responsibility.* Loan payments made by an agency under this part do not exempt an employee from his or her responsibility and/or liability for any loan(s) the individual has taken out. The employee also is responsible for any income tax obligations resulting from the student loan repayment benefit.

§ 537.107 Service agreements.

(a) Before an employing agency makes any loan payments for an employee, the employee (or job candidate) must sign a written service agreement to complete a specified period of service with the agency and to reimburse the agency for the student loan repayment benefit when required by § 537.109. The service agreement also may specify any other employment conditions the agency considers to be appropriate, including the employee's (or job candidate's) position and the duties he or she is expected to perform, his or her work schedule, his or her level of performance, and the geographic location of his or her position. (See §§ 537.108 and 537.109.) The service agreement may address the possibility that, during the period the agreement is in effect, the agency may modify the agreement to provide student loan repayment benefits in addition to those fixed in the agreement based on contingencies or conditions specified in the agreement.

(b) The minimum period of service to be established under a service agreement is 3 years, regardless of the amount of student loan repayment ben-

efits authorized. The agency and the employee may mutually agree to modify an existing service agreement, subject to the limitations at § 537.106(c)(2), to provide additional student loan repayment benefits for additional service without the need for an entirely new service agreement (which would require a new 3-year minimum service period). Periods of leave without pay, or other periods during which the employee is not in a pay status, do not count toward completion of the required service period. Thus, the service completion date must be extended by the total amount of time spent in non-pay status. However, as provided by 5 CFR 353.107, absence because of unperformed service or compensable injury is considered creditable toward the required service period upon reemployment.

(c) A service agreement made under this part in no way constitutes a promise of, or right or entitlement to, appointment, continued employment, or noncompetitive conversion to the competitive service. This condition should be stated in the service agreement.

(d) The service period begins on the date specified in the service agreement. That beginning date may not be—

(1) Earlier than the date the service agreement is signed; or

(2) Earlier than the date the individual begins serving in the position for which he or she was recruited (when student loan repayment benefits are approved to recruit a job candidate to fill an agency position).

(e) The service agreement must contain a provision addressing whether the individual would be required to reimburse the paying agency for student loan repayment benefits if he or she voluntarily separates from the paying agency to work for another agency before the end of the service period. (See § 537.109(b)(2).)

(f) The agency may include in a service agreement specific conditions (in addition to those required by law) that trigger the loss of eligibility for student loan repayment benefits and/or a requirement that the employee reimburse the agency for student loan repayment benefits already received. (See §§ 537.108(a)(3) and 537.109(a)(2).)

However, a service agreement may not require reimbursement based on—

(1) An employee's failure to maintain performance at a particular level (unless the employee is separated based on unacceptable performance); or

(2) An involuntary separation for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731 (e.g., an involuntary separation resulting from a reduction in force or medical reasons).

§ 537.108 Loss of eligibility for student loan repayment benefits.

(a) An employee receiving student loan repayment benefits from an agency is ineligible for continued benefits from that agency if the employee—

(1) Separates from the agency;

(2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the agency; or

(3) Violates a condition in the service agreement, if the agreement specifically provides that eligibility is lost when the condition is violated.

(b) For the purpose of applying paragraph (a)(2) of this section, an acceptable level of performance is one that is equivalent to level 3 ("Fully Successful" or equivalent) or higher, as described in 5 CFR 430.208(d). An employee loses eligibility for student loan repayment benefits if his or her most recent official performance evaluation does not meet this requirement.

§ 537.109 Employee reimbursements to the Government.

(a) An employee is indebted to the Federal Government and must reimburse the paying agency for the amount of any student loan repayment benefits received under a service agreement if he or she—

(1) Fails to complete the period of service required in the applicable service agreement (except as provided by paragraph (b) of this section); or

(2) Violates any other condition that specifically triggers a reimbursement requirement under the agreement.

(b) An agency may not apply paragraph (a) of this section based on an employee's failure to complete the re-

quired period of service established under a service agreement if—

(1) The employee is involuntarily separated for reasons other than misconduct, unacceptable performance, or a negative suitability determination under 5 CFR part 731; or

(2) The employee leaves the paying agency voluntarily to enter into the service of any other agency, unless reimbursement to the agency is otherwise required in the service agreement, as provided by § 537.107(e).

(c) If an agency and an employee mutually agree to modify an existing service agreement to provide additional student loan repayment benefits for additional service (as provided by § 537.107(b)), the modified service agreement may stipulate that, if the employee completes the initial service period but fails to complete the additional service period, he or she is required to reimburse the paying agency only for the amount of any student loan repayment benefits received during the additional service period.

(d) If an employee fails to reimburse the paying agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding is recoverable from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, or through the appropriate provisions governing Federal debt collection if the individual is no longer a Federal employee.

(e) An authorized agency official may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest. (See 5 U.S.C. 5379(c)(3).)

(f) Any amount reimbursed by, or recovered from, an employee under this section must be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited must be merged with other sums in such account and must be available for the same purposes and time period, and subject to the same limitations (if any), as the sums with which merged. (See 5 U.S.C. 5379(c)(4).)